

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT TACOMA

UNITED FINANCIAL CASUALTY
COMPANY, a foreign insurer;

Plaintiff,

V.

RAPID AGE GROUP, LLC, a Washington Limited Liability Company; VITALIY PAPIRNIK and IRINA PAPIRNIK, individually and as the marital community comprised thereof; THE ESTATE OF ERICK TSOSIE; THE ESTATE OF CALSIE SOCKYMA; THE ESTATE OF JAVAN RUNNELS; THE ESTATE OF FELIX BEGAY; THE ESTATE OF CERRA CORNER; THE ESTATE OF LISA ESPARANZA; and ANTHONY PENA, an individual;

Defendants.

Plaintiff United Financial Casualty Company (UFCC) submits the following First Amended Complaint for Declaratory Relief pursuant to 28 U.S.C. §2201 and Fed. R. Civ. P. 57.

I. PARTIES

1.1 Plaintiff UFCC is a foreign insurer organized under the laws of Ohio and is headquartered in Ohio.

1.2 Defendant Rapid Age Group, LLC (Rapid Age) is a Washington limited liability company headquartered in Washington. Upon information and belief, all members of Rapid Age are residents and citizens of Washington.

1.3 Defendant Vitaliy Papirnik is a resident of Washington.

1.4 Defendant Irina Papirnik is a resident of Washington. Defendant V. Papirnik and Defendant I. Papirnik will hereinafter be collectively referred to as the “Papirnik Defendants.”

1.5 At the time of the subject loss, Erick Tsosie was a citizen of Arizona, and the Estate of Erick Tsosie is currently pending in Washington.

1.6 At the time of the subject loss, Calsie Sockyma was a citizen of Arizona, and the Estate of Calsie Sockyma is currently pending in Arizona.

1.7 At the time of the subject loss, Javan Runnels was a citizen of Arizona, and the Estate of Javan Runnels is currently pending in Washington.

1.8 At the time of the subject loss, Felix Begay was a citizen of Arizona, and the Estate of Felix Begay is currently pending in Washington .

1.9 At the time of the subject loss, Cerra Corner was a citizen of Arizona, and the Estate of Cerra Corner is currently pending in Arizona.

1.10 At the time of the subject loss, Lisa Esparanza was a citizen of Arizona, and the Estate of Lisa Esparanza is currently pending in Arizona.

1.12 At the time of the subject loss, Anthony Pena is a citizen of Arizona.

1.13 The parties named above in paragraphs 1.6 through 1.12 will hereinafter collectively be referred to as the “Underlying Claimants.”

II. JURISDICTION AND VENUE

2.1 Jurisdiction is properly before this Court pursuant to 28 U.S.C. § 1332 et sequent,

1 as complete diversity exists among the parties and the amount in controversy exceeds \$75,000.

2 2.2 This Court has jurisdiction over this Declaratory Judgment action pursuant to 28
 3 U.S.C. § 2201 because there is an actual and justiciable controversy between the parties with
 4 respect to the existence of insurance coverage under the Policies of insurance issued by UFCC. A
 5 judicial determination and declaration of the rights and obligations of the parties is necessary and
 6 appropriate at this time because UFCC has no adequate remedy allowed to resolve the current
 7 controversy.

8 2.3 Venue is proper in this Court pursuant to 28 U.S.C. § 1391 as this action involves
 9 a dispute over the application of insurance coverage under policies written out of Washington,
 10 events and omissions which give rise to this claim occurred in this district, and because all of the
 11 Defendants are subject to this Court for personal jurisdiction.

12 III. FACTUAL BACKGROUND

13 A. The Subject Loss

14 3.1 This claim arises from an automobile collision which occurred on Sunday, July 16,
 15 2023, at approximately 11:15 a.m. in Tacoma, Washington.

16 3.2 Defendant Vitaliy Papirnik was driving a 2021 BMW X7 in his personal capacity.
 17 Irina Papirnik was a passenger in the front seat. The exact facts and circumstances of the Papirnik's
 18 travel on that morning are unknown to UFCC, and the facts of the loss remain under investigation
 19 by law enforcement¹.

20 3.3 At the time of the loss, the Papirniks were not engaged in any activities related to
 21 Rapid Age's business.

22
 23 ¹ UFCC understands that law enforcement's ongoing investigation may be based on the belief that the subject loss
 24 was the result of organized racing activity. To the extent the subject loss is in fact the result of organized racing
 activity, UFCC reserves the right to further amend this Complaint to include additional policy provisions and facts
 implicated by the same.

1 3.4 It is not known whether Rapid Age ever had any actual ownership interest in the
 2 2021 BMW X7. Rapid Age was not the registered owner of the 2021 BMW X7 at the time of the
 3 subject loss. It is further unknown whether the 2021 BMW X7 was covered by any other insurance
 4 at the time of the subject loss.

5 3.5 At the time of the subject loss, the Declarations Page for the UFCC Policy issued
 6 to Rapid Age listed the following insured autos:

- 7 1. 2021 RAM Ram 3500
- 8 2. 2021 RAM Ram 3500
- 9 3. 2021 RAM Ram 3500
- 10 4. 2022 Take 3 Trailer
- 11 5. 2021 RAM Ram 3500
- 12 6. 2022 Take 3 Trailer
- 13 7. 2022 Take 3 Trailer
- 14 8. 2022 Take 3 Trailer
- 15 9. 2014 RAM Ram 3500
- 16 10. 2022 Dodge Ram 3500
- 17 11. 2017 Volvo VN
- 18 12. 2017 Volvo VN
- 19 13. 2040 NON Owned Attached Trlr
- 20 14. 2040 NON Owned Attached Trlr
- 21 15. 2015 Ptrb 348
- 22 16. 2040 NON Owned Attached Trlr

23 3.6 Neither Rapid Age nor the Papirniks ever requested for the BMW X7 to be added

1 under the UFCC Policy

2 3.7 It is alleged that Vitaliy Papirnik was negligent in the operation of the BMW X7,
3 causing an accident.

4 3.8 The accident caused bodily injury and death.

5 3.9 As a result of the subject accident, the Underlying Claimants seek damages from
6 Rapid Age and the Papirnik Defendants for alleged negligence (the “Underlying Claims”).

7 3.10 UFCC is currently defending Rapid Age and the Papirnik Defendants under an
8 express Reservation of Rights.

9 **B. The Commercial Auto Policy**

10 3.11 UFCC issued a commercial automobile policy to Rapid Age, Policy No. 03204610-
11 0 (effective 9/13/22–9/13/23) (the “UFCC Policy”).

12 3.12 The UFCC Policy includes both Commercial Auto Liability and Commercial
13 General Liability (CGL) coverage parts. Under the Commercial Auto coverage part, the UFCC
14 Policy includes a \$1 M combined single limit of liability for bodily injury and property damage
15 for liability to others. Under the CGL coverage part, the UFCC Policy includes a \$1 M each
16 occurrence and \$2 M general aggregate limit of liability for trucking operations.

17 3.13 Vitaliy Papirnik is listed as a rated driver on the Commercial Policy. Vitaliy
18 Papirnik is Governor of Rapid Age.

19 3.14 As of July 16, 2023, the 2021 BMW X7 involved in the subject loss was not listed
20 as an insured auto under the UFCC Policy.

21 3.15 To the extent Rapid Age did in fact own the 2021 BMW X7 at the time of the
22 subject loss, UFCC did not insure all autos owned by Rapid Age at the time of the subject loss.

23 3.16 The UFCC Policy’s Commercial Auto coverage part provides the following

provisions regarding who is an insured:

A. When used in Part I - Liability To Others, **insured** means:

1. **You** with respect to an **insured auto**.

2. Any person while using, with **your** permission, and within the scope of that permission, an **insured auto** **you** own, hire, or borrow except:

(a) Any person while he or she is working in a business of selling, leasing, repairing, parking, storing, servicing, delivering or testing **autos**, unless that business is **yours** and it was so represented in your application.

(b) Any person while he or she is moving property to or from an **insured auto**, other than one of **your employees**, partners (if you are a partnership), members (if you are a limited liability company), or officers or directors (if you are a corporation).

(c) The owner or anyone else from whom the **insured auto** is leased, hired, or borrowed. However, this exception does not apply if the **insured auto** is specifically described on the **declarations page**.

(d) The employees or agents of an owner or anyone else from whom the **insured auto** is leased, hired or borrowed. However, this exception does not apply if the **insured auto** is specifically described on the **declarations page**.

For purposes of this subsection A.2., an **insured auto** **you own** includes any **auto** specifically described on the **declarations page**.

3. Any other person or organization, but only with respect to the legal liability of that person or organization for acts or omissions of any person otherwise covered under this Part I - Liability To Others. If **we** make a filing or submit a certificate of insurance on **your** behalf with a regulatory or governmental agency, the term "**insured**" as used in such filing or certificate, and in any

1 related endorsement, refers only to the person
 2 or organization named on such filing,
 3 certificate or endorsement.

4 B. When used in Part I - Liability To Others, **insured auto**
 5 also includes:

6 ...

7 3. Any **temporary substitute auto**; and

8 ...

9 Form 6912 (02/19).

10 3.17 The UFCC Policy's CGL coverage part provides the following provisions
 11 regarding who is an insured:

12 7. **"Insured"** means:

13 a. If **you** are designated in on the **Declarations Page**
 14 as:

15 ...

16 iii. A limited liability company: **you**. **Your**
 17 members are also **insureds**, but only with
 18 respect to the conduct of **your** business.
 19 **Your** managers are **insureds**, but only with
 20 respect to their duties as **your** managers.

21 ...

22 b. Each of the following is also an **insured**:

23 ...

24 ii. **Your** employees, other than **your executive**
 25 **officers** (if **you** are an organization other than
 26 a partnership, joint venture or limited liability
 27 company) or **your** managers (if **you** are a
 28 limited liability company), but only for acts
 29 within the scope of their employment by **you**
 30 or while performing duties related to the
 31 conduct of **your** business.

32 Form Z433 WA (07/08).

33 3.18 The UFCC Policy's Commercial Auto coverage part includes the following

1 insuring agreement:

2 **PART I - LIABILITY TO OTHERS**

3 **INSURING AGREEMENT – LIABILITY TO OTHERS**

4 Subject to the Limits of Liability, if **you** pay the premium for
 5 liability coverage for the **insured auto** involved, **we** will pay
 6 damages, other than punitive or exemplary damages, for **bodily**
injury, property damage, and covered pollution cost or expense
 7 for which an **insured** becomes legally responsible because of an
accident arising out of the ownership, maintenance or use of that
insured auto. [...]

8 **We** will settle or defend, at **our** option, any claim or lawsuit for
 9 damages covered by this Part I. **We** have no duty to settle or defend
 10 any lawsuit, or make any additional payments, after the Limit of
 Liability for this coverage has been exhausted by payment of
 judgments or settlements.

11 Form 6912 (02/19).

12 3.19 The UFCC Policy's CGL coverage part includes the following insuring agreement:

13 **COVERAGE A – BODILY INJURY AND PROPERTY
 DAMAGE LIABILITY**

14 **1. Insuring Agreement**

15 a. **We** will pay those sums, OTHER THAN PUNITIVE
 16 OR EXEMPLARY DAMAGES, that the **insured**
 17 becomes legally obligated to pay as damages because
 18 of **bodily injury or property damage** to which this
 19 insurance applies. **We** will have the right and duty to
 20 defend the **insured** against any **suit** seeking those
 21 damages. However, **we** will have no duty to defend
 the **insured** against any **suit** seeking damages for
bodily injury or property damage to which this
 insurance does not apply. **We** may, at **our** discretion,
 investigate any **occurrence** and settle any claim or
suit that may result. However:

22 (1) The amount **we** will pay for damages is
 23 limited as described in Section II – Limits Of
 Liability; and

(2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A and B or medical expenses under Coverage C;

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments — Coverages A and B.

b. This insurance applies to **bodily injury** and **property damage** only if:

- (1) The **bodily injury** or **property damage** is caused by an **occurrence** that takes place in the **coverage territory**; and
- (2) The **bodily injury** or **property damage** occurs during the policy period.

Any **bodily injury or property damage**, whether such **bodily injury or property damage** is known or unknown, that first occurred prior to the inception date of this policy (or the retroactive date of this policy, if any, whichever is earlier), or that is, or is alleged to be, in the process of occurring at the inception date of this policy (or the retroactive date of this policy, if any, whichever is earlier), even if the **occurrence** continues during this policy period, will be deemed to have occurred prior to the policy period. Any **bodily injury or property damage**, whether known or unknown, which is in the process of settlement, adjustment or **suit** as of the inception date of this policy (or the retroactive date of this policy, if any, whichever is earlier) will also be deemed to have occurred prior to the policy period.

Bodily injury or property damage that first occurs during this policy period includes any continuation, change or resumption of that **bodily injury** or **property damage** after the end of this policy period.

c. Damages because of **bodily injury** or **property damage** include damages claimed by any person or organization for care, loss of services, or death resulting at any time from the **bodily injury**.

d. In the event that a claim or **suit** seeks damages, some of which are covered and others of which are not covered by this policy, the **insured** must agree to a reasonable allocation of the costs and fees of defense, and the **insured** will be responsible for payment of the costs and fees to defend the damages or claims not covered by this policy. This agreement shall be reached in writing, signed by the **insured** and **us**, prior to the date when a responsive pleading to the claim or **suit** is filed on behalf of the **insured**. In the absence of such agreement, **our** duty to defend will apply only to those specific portions of the **suit** that are covered.

Form Z433 WA (07/08).

3.20 The UFCC Policy includes the following CGL exclusions:

GENERAL POLICY EXCLUSIONS

The following exclusion is applicable to both Coverage A and Coverage B.

This endorsement provides no coverage for the following:

12. Other than Trucking Operations

Bodily injury, property damage, or personal or advertising injury arising out of any activity other than the insured's trucking operations or suffered by any person present at the **insured's** premises for reasons that, principally, are not related to the conduct of the **insured's** trucking operations. For purposes of this exclusion, the following are deemed to be other than trucking operations and are excluded:

- (i) the use of the insured's property for any non-business purpose, such as, for example, a residence; or
- (ii) the conduct of any business activity or the rendering of any professional service that is not a necessary part of the insured's trucking operations.

• • •

Form 2371 (06/10).

1 **EXCLUSIONS—READ THE FOLLOWING EXCLUSIONS**
 2 **CAREFULLY.**

3 We will not pay for loss or damage caused by any of the excluded
 4 events described below. **Loss** or damage will be considered to have
 5 been caused by an excluded event if the occurrence of that peril:

6

- 7 a. Directly and solely results in **loss** or damage; or
- 8 b. Initiates a sequence of perils that results in **loss** or damage,
 regardless of the nature of any intermediate or final peril in
 that sequence.

9 Coverage under Coverage A does not apply to:
 10 ...

11 **f. Aircraft, Auto or Watercraft**

12 **Bodily injury or property damage** arising out of:

13

- 14 (1) The ownership, maintenance, use, or entrustment to
 others of any aircraft, **auto** or watercraft owned or
 operated by or rented, leased or loaned to any
 insured; or
- 15 (2) Any **auto** you do not own, lease, hire, rent or borrow
 that is used in connection with **your** business.

16 Form Z433 WA (07/08).

17 3.21 The UFCC Policy's Commercial Auto coverage part includes the following other
 18 insurance provisions:

19 **3. Other Insurance**

20

- 21 a. For any **insured auto** that is specifically described
 on the **declarations page**, this policy provides
 primary coverage. For an **insured auto** which is not
 specifically described on the **declarations page**,
 coverage under this policy will be excess over any
 and all other valid and collectible insurance, whether
 primary, excess or contingent. However, if the
 insured auto that is specifically described on the
 declarations page is a **trailer**, this policy will be
 excess over any and all other valid and collectible
 insurance, whether primary, excess or contingent,
 unless the **trailer** is attached to an **insured auto** that

is a power unit **you** own and that is specifically described on the **declarations** page.

b. If coverage under more than one policy applies on the same basis, either excess or primary, we will pay only **our** proportionate share. **Our** proportionate share is the proportion that the Limit of Liability of this policy bears to the total of the limits of all the Coverage Forms and policies covering on the same basis.

Form 6912 (02/19).

3.22 The UFCC Policy's CGL coverage part includes the following other insurance provisions:

2. Other Insurance

If other valid and collectible insurance is available to the **insured** for a **loss** we cover under Coverages A and B of this policy, **our** obligations are limited as follows:

a. Primary Insurance

This insurance is primary except when Paragraph b. below applies. If this insurance is primary, **our** obligations are not affected unless any of the other insurance is also primary. Then, **we** will share with all that other insurance by the method described in Paragraph c. below.

b. Excess Insurance

When this insurance applies, it is excess over:

(1) Any of the other insurance, whether primary, excess, contingent or on any other basis:

- (a) That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for **your work**;
- (b) That is Fire insurance for premises rented to **you** or temporarily occupied by **you** with permission of the owner;
- (c) That is insurance purchased by **you** to cover **your** liability as a tenant for

property damage to premises rented to **you** or temporarily occupied by **you** with permission of the owner; or If the **loss** arises out of the maintenance or use of an **auto**, aircraft or watercraft to the extent not subject to Exclusions m., n. or o. of Section I – Coverage A – Bodily Injury And Property Damage Liability.

(2) Any other primary insurance available to **you** covering liability for damages arising out of the premises or operations for which **you** have been added as an additional insured by attachment of an endorsement.

When this insurance is excess, **we** will have no duty under Coverages A and B to defend the **insured** against any **suit** if any other insurer has a duty to defend the **insured** against that **suit**. If no other insurer defends, **we** will undertake to do so, but **we** will be entitled to the **insured's** right against all those other insurers.

When this insurance is excess over other insurance, we will pay only **our** share of the amount of the **loss**, if any, that exceeds the sum of:

- (1) The total amount that all such other insurance would pay for the **loss** in the absence of this insurance; and
- (2) The total of all deductible and self-insured amounts under all that other insurance.

We will share the remaining **loss**, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the **Declarations Page** of this policy.

c. Method of Sharing

If all of the other insurance permits contribution by equal shares, **we** will follow this method also. Under this approach each insurer contributes equal amounts

1 until it has paid its applicable limit of insurance or
 2 none of the **loss** remains, whichever comes first.
 3

4 If any of the other insurance does not permit
 5 contribution by equal shares, **we** will contribute by
 6 limits. Under this method, each insurer's share is
 7 based on the ratio of its applicable limit of insurance
 8 to the total applicable limits of insurance of all
 9 insurers.

10 Form Z433 WA (07/08).

11 3.23 The UFCC Policy includes the following duties provisions:

12 **DUTIES IN THE EVENT OF AN ACCIDENT OR LOSS**

13 For coverage to apply under this policy, **you** or the person seeking
 14 coverage must promptly report each **accident or loss** even if **you** or
 15 the person seeking coverage is not at fault. Refer to your policy
 16 documents for the claims phone number.

17 **You** or the person seeking coverage must also obtain and provide **us**
 18 the names and addresses of all persons involved in the **accident or**
 19 **loss**, the names and addresses of any witnesses, and the license plate
 20 numbers of the vehicles involved.

21 If **you** or the person seeking coverage cannot identify the owner or
 22 operator of a vehicle involved in the **accident**, or if theft or
 23 vandalism has occurred, **you** or the person seeking coverage must
 24 notify the police within 24 hours or as soon as practicable. However,
 25 for purposes of uninsured motorist coverage when the owner or
 26 operator of a vehicle involved in the accident cannot be identified,
 27 **you** or the person seeking coverage must notify the police no more
 28 than 30 days after the accident.

29 A person seeking coverage must:

30 1. cooperate with **us** in any matter concerning a claim or
 31 lawsuit;
 32 2. provide any written proof of **loss** **we** may reasonably require;
 33 3. allow **us** to take signed and recorded statements, including
 34 sworn statements and examinations under oath, which **we**
 35 may conduct outside the presence of **you**, a **relative**, or any
 36 person claiming coverage, and answer all reasonable
 37 questions **we** may ask as often as **we** may reasonably require;

1 4. promptly call **us** to notify **us** about any claim or lawsuit and
 2 send **us** any and all legal papers relating to any claim or
 3 lawsuit;
 4 5. attend hearings and trials as **we** require;
 5 6. submit to medical examinations at **our** expense by doctors
 6 **we** select as often as **we** may reasonably require;
 7 7. authorize **us** to obtain medical and other records;
 8 8. take reasonable steps after a **loss** to protect the **insured auto**
 9 from further **loss**. **We** will pay reasonable expenses incurred
 10 in providing that protection. If failure to provide such
 11 protection results in further loss, any additional damages will
 12 not be covered under this policy;
 13 9. allow **us** to have access to an **insured auto** or other **auto**
 14 involved in an **accident or loss** and to have it inspected and
 15 appraised before its repair or disposal; and
 16 10. authorize **us** access to **your** business or personal records as
 17 often as **we** may reasonably require.
 18 ...
 19 16. **Duty to Report Changes**

20 **You** must promptly notify **us** when:

21 1. **your** mailing or business address changes;
 22 2. the principal garaging address of an **insured auto**
 23 changes;
 24 3. there is any change with respect to the persons who
 25 operate an **insured auto**;
 26 4. there is a change in the driver's license status, or state
 27 or country of license issuance, of any person using
 28 an **insured auto**; or
 29 5. **you** acquire, sell, or dispose of **autos**.

30 Form 6912 (02/19).

31 3.24 The UFCC Policy includes the following definitions:

32 1. "**Accident**" means a sudden, unexpected and unintended
 33 event, or a continuous or repeated exposure to that event, that
 34 causes **bodily injury** or **property damage**.
 35 2. "**Auto**" means a land motor vehicle or **trailer** designed for
 36 travel on public roads, or any other land vehicle that is
 37 subject to a compulsory or financial responsibility law or
 38 other motor vehicle insurance law in the state or province
 39 where it is licensed or principally garaged. [...]

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6. **“Insured auto” or “your insured auto”** means:
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- a. Any **auto** specifically described on the **declarations page**; or
- b. An additional **auto** for Part I – Liability To Others and/or Part II – Damage To Your Auto on the date **you** become the owner if:
 - (i) **you** acquire the **auto** during the policy period shown on the **declarations page**;
 - (ii) **we** insure all **autos** owned by **you** that are used in **your** business;
 - (iii) no other insurance policy provides coverage for that **auto**; and
 - (iv) **you** tell **us** within 30 days after **you** acquire it that **you** want **us** to cover it for that coverage.

16 If you add any coverage, increase your limits, or
17 make any other changes to this policy during the 30-
18 day period after you acquire an additional auto, these
19 changes to your policy will not become effective
20 until after you ask us to add the coverage, increase
21 your limits, or make such changes for the additional
22 auto. We may charge premium for the additional
23 auto from the date you acquire the auto.

24 With respect to Part I – Liability To Others, if **we**
25 provide coverage for an additionally acquired **auto**
26 in accordance with this paragraph b., **we** will provide
27 the same coverage for such additional **auto** as **we**
28 provide for any **auto** shown on the **declarations**
29 **page**.

30 ...

- c. Any replacement **auto** on the date **you** become the owner if:
 - (i) **you** acquire the **auto** during the policy period shown on the **declarations page**;
 - (ii) the **auto** that **you** acquire replaces one specifically described on the **declarations page** due to termination of **your** ownership

1 of the replaced **auto** or due to mechanical
 2 breakdown of, deterioration of, or **loss** to the
 3 replaced **auto** that renders it permanently
 4 inoperable; and
 5 (iii) no other insurance policy provides coverage
 6 for that **auto**.

7
 8 If **we** provide coverage for a replacement **auto**, **we** will
 9 provide the same coverage for the replacement **auto** as **we**
 10 provide for the replaced **auto**. **We** will provide that coverage
 11 for a period of 30 days after **you** become the owner of such
 12 replacement **auto**. **We** will not provide any coverage after
 13 this 30-day period unless within this period **you** ask **us** to
 14 insure the replacement **auto**. If **you** add any coverage,
 15 increase **your** limits, or make any other changes to **your**
 16 policy during this 30-day period, these changes to **your**
 17 policy will not become effective until after **you** ask **us** to add
 18 the coverage, increase **your** limits, or make such changes.

19 ...

20 17. **“Temporary substitute auto”** means any **auto** **you** do not
 21 own while used with the permission of its owner as a
 22 temporary substitute for an **insured auto** that has been
 23 withdrawn from normal use due to breakdown, repair,
 24 servicing, loss or destruction. However, **temporary**
 1 **substitute auto** does not include any **auto** available for the
 2 regular or frequent use of **you**, a **relative**, or **your employees**
 3 unless that **auto** is insured under a separate policy of
 4 insurance that provides at least the minimum required limits
 5 of financial responsibility under the applicable state and
 6 federal laws.

7 ...

8 21. **“You”**, **“Your”** and **“Yours”** refer to the named insured
 9 shown on the **decelerations page**.

10 Form 6912 (02/19).

11 16. **“Suit”** means a civil proceeding involving allegations of
 12 damages because of **bodily injury**, **property damage** or
 13 **personal and advertising injury** to which this insurance
 14 applies. Suit includes but is not limited to:

- 1 a. An arbitration proceeding in which such damages are
2 claimed and to which the insured must submit or
3 does submit with **our** consent; or
4 b. Any other alternative dispute resolution proceeding
5 in which such damages are claimed and to which the
6 **insured** submits with **our** consent.

Form Z433 WA (07/08).

C. Facts Relating to Coverage Analysis – The Commercial Auto Coverage Part

3.25 Based on the foregoing, the UFCC Policy provides coverage for damages and an insured is legally liable to pay because of “bodily injury” or “property damage” caused by an “accident” arising out of the ownership, maintenance, or use of an “insured auto”.

3.26 The UFCC Policy defines the term “insured auto” as any auto identified on the Declarations page of the subject policy.

3.27 At the time of the subject loss, the auto involved in the subject loss was not identified on the Declarations Page of the UFCC Policy.

3.28 As a result, the 2021 BMW X7 does not qualify as an “insured auto” by virtue of it being identified on the Declarations Page and the insuring agreement is not triggered.

3.29 The UFCC Policy further defines the term “insured auto” to include any additional “auto” that Rapid Age becomes the owner of if Rapid Age acquires the “auto” during the policy period; UFCC insures all “autos” owed by Rapid Age used in its business; no the insurance policy provides coverage for that “auto”; and within 30 days after Rapid Age acquires the “auto”, Rapid Age tells UFCC that Rapid Age wants UFCC to provide coverage for said “auto”.

3.30 It is unclear when Rapid Age became the owner of the 2021 BMW X7. To the extent Rapid Age did in fact own the 2021 BMW X7 at the time of the subject loss, UFCC did not insure all autos owned by Rapid Age at the time of the subject loss. It is unknown whether the 2021 BMW X7 was covered by any other insurance at the time of the subject loss. Neither Rapid

1 Age nor the Papirniks ever requested for the BMW X7 to be added under the UFCC Policy.

2 3.31 As a result, the 2021 BMW X7 does not qualify as an “insured auto” by virtue of it
3 being an additional “auto,” as set forth above.

4 3.32 The UFCC Policy defines the term “insured auto” to include any replacement
5 “auto” on the date Rapid Age becomes the owner if Rapid Age acquires the “auto” during the
6 policy period; the “auto” replaces one specifically described on the declarations page due to
7 termination of Rapid Age’s ownership of the replaced “auto” or due to mechanical breakdown of,
8 deterioration of, or loss to the replaced “auto” that renders it permanently inoperable; and no other
9 insurance policy provides coverage for that “auto.”

10 3.33 It is unclear when Rapid Age became the owner of the 2021 BMW X7. The 2021
11 BMW X7 was not acquired by Rapid Age to replace a vehicle specifically described and covered
12 under the UFCC Policy’s Declarations Page due to termination of ownership, mechanical
13 breakdown, or loss rendering a specifically described and covered under the UFCC Policy
14 permanently inoperable. It is unknown whether the 2021 BMW X7 was covered by any other
15 insurance at the time of the subject loss.

16 3.34 As a result, the 2021 BMW X7 does not qualify as an “insured auto” by virtue of it
17 being a replacement “auto,” as set forth above.

18 3.35 The UFCC Policy defines the term “insured auto” to include a “temporary
19 substitute auto.”

20 3.36 The UFCC Policy defines the term “temporary substitute auto” to include any
21 “auto” Rapid Age does not own while used with the permission of its owner as a temporary
22 substitute for an “insured auto” that has been withdrawn from normal use due to breakdown, repair,
23 servicing, loss, or destruction. “Temporary substitute auto” does not include any “auto” available
24

1 for the regular or frequent use of Rapid Age, a “relative,” or Rapid Age’s “employees” unless that
 2 “auto” is insured under a separate policy of insurance that provides at least the minimum required
 3 limits of financial responsibility under the applicable state and federal laws.

4 3.37 As a result, the 2021 BMW X7 does not qualify as an “insured auto” by virtue of it
 5 being a “temporary substitute auto,” as set forth above.

6 3.38 Upon information and belief, at the time of the subject loss, the 2021 BMW X7 was
 7 not being used by Rapid Age as a temporary substitute for vehicle specifically described and
 8 covered under the UFCC Policy that was withdrawn from normal use due to breakdown, repair,
 9 servicing, loss, or destruction.

10 3.39 UFCC has repeatedly requested information regarding the 2021 BMW X7, the
 11 subject loss, the relationship between the Papini’s, Rapid Age, and the entities/individuals who
 12 owned the 2021 BMW X7 prior and subsequent to Rapid Age.

13 3.40 To date, Rapid Age and the Papirniks have not responded to UFCC’s requests for
 14 information. This lack of response has prejudiced UFCC’s ability to investigate and evaluate the
 15 claim.

16 **D. Facts relating to Coverage Analysis – The Commercial General Liability Coverage**
 17 **Part**

18 3.41 The CGL coverage part excludes coverage for “bodily injury” and “property
 19 damage,” arising out of any activity other than Rapid Age’s trucking operations. For purposes of
 20 this exclusion, the following are deemed to be other than trucking operations and are excluded: (i)
 21 the use of Rapid Age’s property for any non-business purposes; and (ii) the conduct of any business
 22 activity or the rendering of any professional service that is not a necessary part of the Rapid Age’s
 23 trucking operations.

24 3.42 At the time of the loss, the Papirniks were not engaged in any activities related to

1 Rapid Age's business. As a result, the foregoing exclusion excludes coverage under the CGL
 2 coverage part.

3 3.43 The CGL coverage part excludes coverage for loss or damage caused by ““bodily
 4 injury” or ““property damage,” arising out of the ownership, maintenance, or use of any ““auto”
 5 owned or operated by, or rented, leased, or loaned to any ““insured” and any ““auto” Rapid Age does
 6 not own, lease, hire, rent or borrow that is used in connection with Rapid Age’s business.

7 3.44 The subject loss arises out of the use of the 2021 BMW X7. As a result, the
 8 foregoing exclusion discussed in paragraph 3.# excludes coverage under the CGL coverage part.

9 **IV. NO INDEMNITY OR DEFENSE COVERAGE IS OWED UNDER THE UFCC
 10 POLICIES**

11 4.1 Pursuant to the UFCC Policy’s Commercial Auto coverage part, Rapid Age, with
 12 respect to an ““insured auto”, qualifies as an insured.

13 4.2 An actual and justiciable controversy exists as to whether subject loss involves an
 14 ““insured auto” such that Rapid Age is an ““insured” under the UFCC Policy’s Commercial Auto
 15 coverage part.

16 4.3 Pursuant to the UFCC Policy’s Commercial Auto coverage part, a person while
 17 using, with Rapid Age’s permission and within the scope of that permission, an ““insured auto”
 18 Rapid Age owns, hires, or borrows qualifies as an insured.

19 4.4 An actual and justiciable controversy exists as to whether the Papirnik Defendants
 20 qualify as insureds under the UFCC Policy’s Commercial Auto coverage part.

21 4.5 Pursuant to the foregoing, if Rapid Age pays the premium for liability coverage for
 22 the ““insured auto” involved, the UFCC Policy’s Commercial Auto insuring agreement provides
 23 coverage for ““bodily injury” and ““property damage” for which an ““insured” becomes legally
 24 responsible because of an ““accident” arising out of the ownership, maintenance, or use of that

1 “insured auto.”

2 4.6 An actual and justiciable controversy exists as to whether subject loss involves an
 3 “insured auto” such that the UFCC Policy’s Commercial Auto insuring agreement attaches.

4 4.7 Pursuant to the UFCC Policy’s CGL coverage part, if the entity designated on the
 5 “declarations page” is a limited liability company, that limited liability company qualifies as an
 6 insured. That limited liability company’s members also qualify as insureds, but only with respect
 7 to the conduct of that limited liability company’s business. That limited liability company’s
 8 managers also qualify as insureds, but only with respect to their duties as that limited liability
 9 company’s managers.

10 4.8 An actual and justiciable controversy exists as to whether the Papirnik Defendants
 11 qualify as “insureds” under the UFCC Policy’s CGL coverage part.

12 4.9 Pursuant to the foregoing, the UFCC Policy’s CGL coverage part provides that
 13 UFCC will have the right and the duty to defend an “insured” against any “suit” seeking damages
 14 because of “bodily injury” or “property damage.” In the event that a claim or “suit” seeks damages,
 15 some of which are covered and others of which are not covered by this policy, Rapid Age must
 16 agree to a reasonable allocation of the costs and fees of defense, and Rapid Age will be responsible
 17 for payment of the costs and fees to defend the damages or claims not covered by this policy. This
 18 agreement shall be reached in writing, signed by Rapid Age and UFCC, prior to the date when a
 19 responsive pleading to the claim or “suit” is filed on behalf of Rapid Age. In the absence of such
 20 agreement, UFCC’s duty to defend will apply only to those specific portions of the “suit” that are
 21 covered.

22 4.10 An actual and justiciable controversy exists as to whether the subject loss gave rise
 23 to a claim or “suit” seeking damages which are not covered under the UFCC Policy’s CGL
 24

coverage part.

4.11 Pursuant to the foregoing, the UFCC Policy's CGL coverage part excludes coverage for "bodily injury" and "property damage" arising out of any activity other than Rapid Age's trucking operations.

4.12 An actual and justiciable controversy exists as to whether the subject loss involves activity other than Rapid Age's trucking operations.

4.13 Pursuant to the foregoing, the UFCC Policy's CGL coverage part excludes coverage for "bodily injury" and "property damage" arising out of the ownership, maintenance, use, or entrustment to others of any "auto" owned by any insured.

4.14 An actual and justiciable controversy exists as to whether the subject loss arises out of the ownership, maintenance, use, or entrustment to others of any "auto" owned by any insured.

4.15 UFCC reserves the right to assert any other exclusions or grounds for which coverage for the claims asserted in the Underlying Claims may be excluded under the UFCC Policies.

V. CAUSE OF ACTION FOR DECLARATORY RELIEF

5.2 Actual and justiciable controversies exist as to whether any defense coverage is owed to the Papirnik Defendants and Rapid Age under the UFCC Policy regarding the claims asserted against them in the Underlying Claims.

5.3 Pursuant to and in accordance with 28 U.S.C. § 2201, UFCC requests that the Court grant declaratory relief in its favor and enter a judicial determination that UFCC does not have an obligation to provide a defense to the Papirnik Defendants or Rapid Age under the UFCC Policy regarding the claims asserted against them in the Underlying Claims.

5.4 Actual and justiciable controversies exist as to whether any indemnity coverage is available to the Papirnik Defendants or Rapid Age under the UFCC Policy regarding the claims asserted against them in the Underlying Claims.

5.5 Pursuant to and in accordance with 28 U.S.C. § 2201, UFCC requests that the Court grant declaratory relief in its favor and enter a judicial determination that UFCC does not have an obligation to any indemnity coverage to the Papirnik Defendants or Rapid Age under the UFCC Policy regarding the claims asserted against them in the Underlying Claims.

VI. PRAYER FOR RELIEF

UFCC, having alleged the foregoing, does now hereby pray for relief as follows:

1. For a declaration that UFCC owes no defense obligation to the Papirnik Defendants or Rapid Age for any claims asserted against them, including but not limited to the Underlying Claims, arising from the subject loss.

2. For a declaration that UFCC owes no indemnity obligation to the Papirnik Defendants or Rapid Age for any claims asserted against them, including but not limited to the Underlying Claims, arising from the subject loss.

3. For a declaration that the Underlying Claimants are bound by any judicial declarations in this matter involving the UFCC Policies.

4. For all interest allowed by law.

5. For attorney fees and costs allowed by statute and law

6. For other and further relief as the Court deems just and equitable.

DATED this 21st day of June 2024.

LETHER LAW GROUP

s/ Eric J. Neal

s/ Kasie Kashimoto

Eric J. Neal, WSBA #31863

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CERTIFICATE OF SERVICE

The undersigned hereby certifies under the penalty of perjury under the laws of the United States of America that on this date I caused to be served in the manner noted below a true and correct copy of the foregoing on the party mentioned below as indicated:

Chris Davis, WSBA #23234

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By: First Class Mail E-Service/Email Legal Messenger

DATED this 21st day of June 2024, at Seattle, Washington.

/s/ Devon Sheehan

Devon Sheehan | Paralegal

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FIRST AMENDED COMPLAINT
FOR DECLARATORY RELIEF – 27
Case No. 3:23-cv-6068

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